



## Decision and Reasons for Decision

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**Application Number:** 311742

**Applicant:** 016UGU

**Respondent:** Queensland Police Service

**Decision Date:** 6 December 2013

**Catchwords:** ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – applicant sought access to CCTV footage of incident – whether the CCTV footage was obtained, used or prepared for an investigation by a prescribed crime body or another agency in the performance of the prescribed functions of the prescribed crime body – whether the CCTV footage is exempt from disclosure under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld)

### REASONS FOR DECISION

#### Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to closed circuit television (**CCTV**) footage relating to her arrest and detention.
2. QPS identified one DVD of CCTV footage relevant to the access application and decided<sup>1</sup> to refuse access to a copy of the CCTV footage on the grounds that disclosure would, on balance, be contrary to the public interest.<sup>2</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review.
4. On external review, the applicant submitted that she was searched, arrested and detained unlawfully and that she was subjected to unnecessary use of force. The applicant informed OIC that she had made a complaint about the conduct of relevant QPS officers to the Crime and Misconduct Commission (**CMC**).
5. QPS submitted that the CMC had referred the complaint to the Ethical Standards Command of QPS, which was conducting an investigation into the complaint, and that the CCTV footage had been obtained for the purpose of this investigation.

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<sup>1</sup> By decision dated 22 August 2013.

<sup>2</sup> QPS did offer the applicant the opportunity to view the CCTV footage however in this external review the applicant seeks access to a copy of the CCTV footage.

6. For the reasons given below, I vary QPS' decision and find that access to the CCTV footage can be refused under section 67(1) of the IP Act and section 47(3)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that it comprises exempt information under section 48 and schedule 3, section 10(4) of the RTI Act.

### Significant procedural steps

7. Significant procedural steps relating to the access application and external review are set out in the Appendix.

### Reviewable decision

8. The decision under review is QPS' decision dated 22 August 2013 refusing access to a copy of the CCTV footage on the basis that disclosure would, on balance, be contrary to the public interest.

### Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendix).

### Information in issue

10. The information under consideration in this external review (**Information in Issue**) comprises an electronic record of CCTV footage.

### Relevant law

11. Under the IP Act a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>3</sup> However, this right is subject to other provisions of the IP Act and RTI Act,<sup>4</sup> including the grounds on which access can be refused.
12. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.<sup>5</sup> Schedule 3 of the RTI Act specifies the type of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest.
13. Relevantly, information is exempt if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body (**CMC Exemption**).<sup>6</sup> An exception to the CMC Exemption will apply where the Information in Issue:
- consists of information about the applicant; and
  - the investigation has been finalised.<sup>7</sup>

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<sup>3</sup> Section 40 of the IP Act.

<sup>4</sup> Section 67(1) of the IP Act provides that access to a document may be refused on the same basis upon which access to a document could be refused under section 47 of the RTI Act.

<sup>5</sup> Section 47(3)(a) and section 48 of the RTI Act.

<sup>6</sup> Schedule 3, section 10(4) of the RTI Act.

<sup>7</sup> Schedule 3, section 10(6) of the RTI Act.

## Findings

14. For the CMC Exemption to apply, the following requirements must be satisfied:
- the Information in Issue must have been obtained, used or prepared for an investigation;
  - the investigating body or agency must be a prescribed crime body or other agency performing a prescribed crime body's functions; and
  - the exception set out in schedule 3, section 10(6) of the RTI Act must not apply.
15. I have read and carefully considered the information provided by the applicant. The essence of the applicant's submissions are that the CMC Exemption is unfair, undemocratic and heavily biased in favour of QPS. The applicant also submits that release of a copy of the Information in Issue would not hinder the investigation but rather it would ensure that the investigation was conducted honestly and ethically. I acknowledge the submissions made by the applicant. However, these submissions are not relevant to an assessment of whether the CMC Exemption applies to the Information in Issue under the RTI Act. Provided the requirements of the CMC Exemption as identified in paragraph 14 are met, access to the Information in Issue can be refused.

### ***Are the requirements of the CMC Exemption satisfied?***

16. Yes, the requirements are satisfied for the reasons explained below.

#### **Has QPS 'obtained, used or prepared' the Information in Issue for the investigation?**

17. The terms '*obtained, used or prepared*' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in accordance with the principles of statutory interpretation.
18. I accept QPS' submissions that its Ethical Standards Command obtained the CCTV footage for the relevant investigation.
19. I am therefore satisfied that the Information in Issue is being used by QPS for the relevant investigation.

#### **Is the relevant investigation being conducted by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body?**

20. The CMC is a prescribed crime body<sup>8</sup> under the RTI Act and the CMC's prescribed functions include its '*crime function*', '*intelligence functions*' and '*misconduct functions*' as defined in the *Crime and Misconduct Act 2001* (Qld) (**CM Act**).<sup>9</sup> The CMC may refer an official misconduct complaint to a public official (such as the QPS Commissioner) to be dealt with by the public official or in cooperation with the CMC, subject to the CMC's monitoring role.<sup>10</sup>

<sup>8</sup> Schedule 3, section 10(9) of the RTI Act.

<sup>9</sup> Schedule 3, section 10(9) of the RTI Act.

<sup>10</sup> Section 46(2)(b) of the CM Act.

21. QPS' Ethical Standards Command submits that it is conducting the relevant investigation into official misconduct consequent to referral of the matter to it by the CMC, and in so doing, is performing the CMC's misconduct functions.<sup>11</sup>
22. I am satisfied that the relevant investigation is into allegations which, if proven, may constitute official misconduct. In conducting these investigations, I am also satisfied that QPS is performing the CMC's misconduct function by ensuring the complaints are dealt with in accordance with the CM Act,<sup>12</sup> with oversight from the CMC.

**Does the exception to the CMC Exemption apply?**

23. No. The exception only applies where the investigation is finalised and the information is about the applicant. As the investigation is ongoing<sup>13</sup>, the exception does not apply.

**Conclusion**

24. I am satisfied that the Information in Issue satisfies the requirements of the CMC Exemption under schedule 3, section 10(4) of the RTI Act.

**DECISION**

25. I vary QPS' decision and find that access to the Information in Issue can be refused under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act on the basis that it comprises exempt information under section 48 and schedule 3, section 10(4) of the RTI Act.
26. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Louisa Lynch**  
**Assistant Information Commissioner**

**Date: 6 December 2013**

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<sup>11</sup> These submissions were confirmed by the Senior Sergeant of the Integrity & Performance Group, Ethical Standards Command, QPS by email to OIC on 10 October 2013.

<sup>12</sup> Section 42 of the CM Act.

<sup>13</sup> QPS indicated to OIC by email dated 5 December 2013 that the relevant official misconduct investigation is ongoing.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
7 August 2013	QPS received the access application.
22 August 2013	QPS issued its decision on the access application.
6 September 2013	OIC received the applicant's application for external review.
17 September 2013	OIC confirmed with the applicant and QPS that the external review application had been accepted and asked QPS for a copy of the Information in Issue.
18 September 2013	OIC received email submissions from the applicant indicating that she had made a complaint to the CMC.
23 September 2013	OIC received a copy of the Information in Issue on a DVD from QPS.
2 October 2013	OIC contacted the applicant to confirm that she was aware QPS had granted her inspection of the Information in Issue. OIC asked QPS to provide further information about whether the Information in Issue had been obtained by the CMC or QPS Ethical Standards Command as part of an ongoing investigation. QPS notified OIC that the QPS Ethical Standards Command was currently conducting an investigation into the complaint and the Information in Issue was obtained for the investigation. OIC asked QPS whether the investigation related to allegations of official misconduct and whether the complaint was referred to the QPS Ethical Standards Command by the CMC.
8 October 2013	The applicant contacted OIC and discussed the issues on the review with an OIC staff member.
10 October 2013	QPS provided confirmation from its Ethical Standards Command that the investigation related to allegations of official misconduct and the complaint had been referred to QPS by the CMC.
11 October 2013	OIC conveyed an oral preliminary view to the applicant that access may be refused to the Information in Issue under section 67(1) of the IP Act and sections 47(3)(a), 48 and schedule 3, section 10(4) of the RTI Act.
11 & 22 October 2013	The applicant emailed OIC asking questions about the preliminary view.
25 October 2013	OIC wrote to the applicant confirming the preliminary view and inviting her to make submissions if she did not accept the preliminary view.
7 November 2013	The applicant notified OIC that she would provide submissions in response to the preliminary view by 11 November 2013.
11 November 2013	The applicant notified OIC that she would provide submissions in response to the preliminary view by 14 November 2013.
15 November 2013	The applicant requested that OIC keep the external review open.
18 November 2013	OIC contacted the applicant to discuss the external review. The applicant indicated that she sought a formal external review decision. OIC asked the applicant to make final submissions by 22 November 2013.
23 November 2013	The applicant provided OIC with submissions by email.
5 December 2013	QPS emailed OIC to confirm that the relevant investigation into official misconduct was ongoing.